



Thomas O. Forslund, Director

Governor Matthew H. Mead

MEMORANDUM

DATE: July 15, 2011

TO: Adult Developmental Disabilities (DD), Child DD, and ABI Waiver Providers and Stakeholders

FROM: Joe Simpson, Administrator

Behavioral Health Division - Developmental Disabilities Programs

SUBJECT: House Enrolled Act 91 Implementation & Waiver Changes

REF #: 11-121-JS

In March 2011, the 2011 Wyoming Legislature passed House Enrolled Act 91 (HEA 91) changing Medicaid rules to allow payment to family caregivers who become certified providers and a Limited Liability Company (LLC) or Corporation through the Medicaid HCBS waivers. The Behavioral Health Division - Developmental Disabilities Programs, referred to as the "Division", has always allowed some relatives/family caregivers to receive reimbursement, such as a participant's siblings, aunts, uncles, and grandparents, if they became certified Medicaid Waiver Providers, or were employed by providers. In compliance with HEA 91, the Division amended the Adult Developmental Disabilities (DD), Child DD, and Acquired Brain Injury waivers to allow parents/stepparents (and legal guardians of minor children) to receive reimbursement for providing specific waiver services.

To implement this change in the waiver document, the Division had to address <u>all</u> relatives who provide services to a related participant and ensure there are systems to guard against conflicts of interest, inadvertent limits on participant choice, and potential fraud. Therefore, this memorandum summarizes the waiver amendments to service definitions, provider qualifications, and the additional requirements for providers who are serving their relatives. This memorandum also serves to implement policy, which supersedes the following Wyoming Medicaid rules:

- Chapters 41, 42, and 43, Section 7 (d), "Parents, step-parents, and/or spouses shall not be reimbursed by waiver funding for any waiver services" and Section 7 (a)(i)(H), "Reimbursement for habilitation services shall not be made directly or indirectly to a parent, stepparent, spouse, or guardian of a participant"; and
- Chapter 45, Section 38 (d) "A caregiver that is not a parent, guardian, or spouse of a participant and who wishes to receive Medicaid reimbursement for furnishing covered services to a participant shall enroll with the Division as a provider."

SERVICES OPTIONS FOR A RELATIVE PROVIDER

Relatives, including a participant's biological or adoptive parent(s), stepparent(s), immediate and extended family members, such as a sibling, aunt, uncle, grandparent, child age 18 and over of a waiver participant, first cousin, or step-family member, who become providers, are hired as an employee of a provider, or hired through self-direction, may furnish the following services:

- Relatives (excluding parents/stepparents) may provide case management, support brokerage, respite, personal care, companion, residential habilitation, day habilitation, supported living, specialized equipment, community integrated employment, and environmental modifications.
- To participants under age 18, a legally responsible individual, which may be the parent/stepparent or legally appointed guardian of a minor child, may operate as owner or officer of a certified waiver provider and become an LLC or a corporation to provide case management (unpaid), and support brokerage (unpaid), and personal care to their child/ward for extraordinary care purposes only.

Extraordinary care is defined in the *FY2012 Service Definitions* for Personal Care and in the *Provider Manual- July 2011 Addendum*, which are available on the Division's website at http://health.wyo.gov/ddd/relativeproviderinfo.html.

• To participants age 18 and over, parents/stepparents may provide personal care, residential habilitation, day habilitation, supported living, specialized equipment, case management (unpaid), and support brokerage (unpaid). If operating as an owner or officer of a certified waiver provider, the parent/stepparent is required to become an LLC or a corporation.

SERVICE LIMITATIONS

- For residential habilitation services, the parent/stepparent provider shall not live in the same residence as the participant receiving residential habilitation services.
- Personal care and Supported Living services reimbursed by the waiver to a relative provider cannot exceed four (4) hours per day per participant, if the provider lives in the same residence as the participant.
- A spouse of the participant, a legally appointed guardian of a participant age 18 and over, or an owner or officer of a provider organization serving their ward <u>cannot</u> receive reimbursement for providing waiver services.

PROVIDER DEADLINES

- All providers must read the *Provider Manual July 2011 Addendum* to ensure they operate in accordance with the Division's requirements.
- Relative Disclosure Form- Each relative who provides services to a related waiver participant or intends to provide services are required to disclose the relationship and acknowledge and address the safeguards set forth by the Division in the *Relative Disclosure and Safeguard Acknowledgment Form*. This requirement includes relatives employed by a provider agency, and relatives or guardians of waiver participants who own, operate, or are an officer of a certified provider agency. *Each relative providing services shall complete this disclosure form by September 30, 2011.* The form is available on the Division's website http://health.wyo.gov/ddd/relativeproviderinfo.html. A *Relative Provider Conflict of Interest Checklist* is available on the website to help you determine if you or a provider or employee you know has a relationship with a participant that must be disclosed.
- Case Manager With A Conflict Of Interest If a case manager and another provider on the plan are both related to the participant, then the participant has until December 31, 2011 to transition to a new provider to address the conflict. (For example, if Joe Participant's sister is his case manager and his aunt is his respite provider, he will have to choose to transition to an unrelated case manager OR an unrelated respite provider.)

QUESTIONS

For more information, useful tools, and Frequently Asked Questions regarding the implementation of HEA 91 and the waiver amendments visit the Division's HEA 91 Relative Provider webpage at http://health.wyo.gov/ddd/relativeproviderinfo.html. This memorandum and the provider requirements will be discussed at length during the next monthly provider support call July 28, 2011 at 2:00 pm. Please mark your calendars to call in at 1-877-278-8686, access code 252484.

If you have a question on the legislation or the waiver amendments, please contact Jamie Staunton at the Division at <u>Jamie.staunton@wyo.gov</u> or 307-777-5660. If you questions regarding provider certification, contact your local Provider Support Specialist. For questions regarding a specific participant, contact your Participant Support Specialist. The Division's central number to contact any staff is 307-777-7115 or 1-800-510-0280. As always, visit our website for forms, tools, guidance and past memorandums at http://www.health.wyo.gov/ddd/index.html.